

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SAMUEL MENDEZ

:

Plaintiff,

: C.A. No. 05-35 Erie

VS

PENNSYLVANIA DEPARTMENT

:

OF CORRECTIONS, et al.,

Defendants,

:

:

TO THE HONORABLE PRESIDING JUDGE, AND HON. MAGISTRATE JUDGE:

PLAINTIFF'S MOTION TO DISMISS, DEFENDANTS PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS, MOTION TO DISMISS FILED IN  
THIS CASE ON OCTOBER 7, 2005 FOR FAILURE TO CONFORM TO  
28 U.S.C. SECTION 1746, SUBMITTED IN GOOD FAITH,

IN FORMA PAUPERIS

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CAUSE OF ACTION:

1. The plaintiff in this legal cause of action shows the Honorable Court the following facts.
2. That the defendant, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, did file in this case on OCTOBER 7, 2005 a MOTION TO DISMISS the PLAINTIFF'S Complaint filed in this case.
3. The plaintiff contends that the said motion to dismiss filed in this case by the aforesaid defendant PENNSYLVANIA DEPARTMENT OF CORRECTIONS is null and void and non obstante as it fails to

conform to the statutory mandates of 28 U.S.C. Section 1746 as it fails to have included in its Motion To Dismiss a verification declareing under " the penalty of perjury " that the contents set forth in said motion was true and correct and the statements subject to the penalty of perjury.

4. The plaintiff contends that it is well understood in this federal court system, that every motion,pleading,answer,complaint, must be accompanied by a verification signed by all or one of the parties involved in the action. In this instant action filed by the defendant Pennsylvania Department of Corrections,there is no verification and such much be dismissed as it is meaningless null and void.

5. The plaintiff is well aware of the fact that if there would have been attached in this matter a defective verification,the same could have been amended. But where as here there is no verification, then the purported legal document so filed is in all reality null and void and must be striked and dismissed for want of validness.

6. The plaintiff contends that the verification requirement in this court and system is none waible(waivable) and must be strictly adhered to. That if this was a case in which the defendants were out of the country and beyond reach then others could present a verification. But in this case the defendant in question just flagrantly disregarded the mandates of 28 U.S.C. Section 1746 and acted arbitrary<sup>1</sup> and capricious and filed the said motion to dismiss in cold reckless disregard of the mandatory requirements of 28 U.S.C. Section 1746.

1. The word intended is arbitrary and is misspelled above.

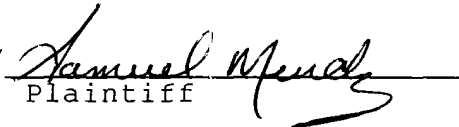
Page(3).

7. The plaintiff contends that the motion to dismiss filed by defendant Pennsylvania Department of Corrections is defective under 28 U.S.C. Section 1746 as it is void of any type of verification.

8. The plaintiff contends that the motion to dismiss being void of the verification is invalid and must be dismissed.

WHEREFORE, the plaintiff moves the Court that an order will issue forthwith from the Court ordering that the defendant Pennsylvania Department Of Corrections motion to dismiss was null and void and the same must be striked and dismissed, as the plaintiff has presented a prima facie circumstance thus warranting denovo action and that the aforesaid action in question should be striked and dismissed secundum legem.

DATE: 10/20/05 Respectfully Submitted/S/

  
Plaintiff

Verification .

SAMUEL MENDEZ, do hereby declare under the penalty of perjury that the foregoing legal action to The U.S. District Court For The Western District Of Pennsylvania is true and correct as he has read the same and moreso as he is the plaintiff named herein.

Executed this 31st. Day Of October 2005.

Respectfully Submitted/S/

Samuel Mendez  
Plaintiff

PROOF OF SERVICE

SAMUEL MENDEZ, do hereby declare under the penalty of perjury, that he has this day caused to be served upon the following named parties a true and correct copy of this foregoing legal action to the U.S. District Court For The Western District Of Pennsylvania by placing the same into the U.S. Mail addressed as follows:

TO: HON. RODNEY M. TORBIC  
SENIOR DEPUTY ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
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Samuel Mendez  
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FRANCIS J. KLEMENSIC, 120 West Tenth Street  
Erie, Pennsylvania 16501-1461

DATE: 10/31/05